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NOTES: CRIMINAL JUSTICE IN MISSISSIPPI.

in them long enough." "It is time," he said, "that we should open our eyes to the real situation, and, like men, begin its correction. This over-solicitude about protecting men charged with assassination and under-solicitude about protecting the citizen from assassination has gone to seed in this country; not only in the higher crimes, but from murder down to disturbing the peace, the vice permeates the whole system, and worse than all, is rooted in the sentiments of the people."

It is refreshing to read an address so full of reason and common sense. Mr. Summers' criticisms are not the vaporings of a theorist, but the honest truths of a frank and candid practicing lawyer, who knows whereof he speaks. The more such protests from the leaders of the bar the better. They indicate an awakening sentiment in the legal profession which augurs well for the future.

Criminal Justice in Mississippi. In a recent address before the Bar Association of Mississippi, Justice Robert Mayes, of the Supreme Court of that State, took occasion to call attention to some of the "absurdities to which the courts have been driven in order to effectuate certain constitutional requirements in the methods of criminal procedure, and which only serve to defeat and not to promote the ends of justice." Addressing himself to the desirability of abolishing an antiquated practice which insists upon the employment of useless and meaningless verbiage in the preparation of legal documents, he asks why an indictment which charges the defendant with murder is not sufficient without the unnecessary assertion that the crime was wilfully, maliciously, unlawfully, and feloniously done. What possible prejudice, he said, can the accused suffer from an omission from the indictment of such verbiage as "malice forethought," "wilful and felonious," "unlawfully," etc., if the indictment charges that the offense was murder? "The design of the criminal law," he went on to say, "is to protect society from those who set at defiance its rules of good conduct, but by strict adherence to many of its useless shambles the purpose of the criminal law has been subverted and the violator of the law, and not society, receives the greatest protection." Justice Mayes then pointed out that what he calls "these worse than useless shields that are thrown around the criminal and so sacredly retained," never had any place in American jurisprudence and that their only effect is to clog the wheels of justice.

Some of the instances of reversals for technical errors by the supreme court of Mississippi which he cited are so grotesque and subversive of justice that it is no wonder that they tend to impair confidence in the courts, and to inspire popular contempt for judges who are guilty of such quibbling. In one case cited by Justice Mayes (*Riggs vs. the State*, 26 Miss.), the decision of the trial court was reversed for the omission of the word "there" from the indictment. In another case a new trial was granted because the word "maliciously" was omitted from the indictment, although it charged that the offense was committed "wilfully and feloniously." In another case (*Cook vs. State*, 72 Miss.), there was a reversal of the omission of the word "did" from an indictment which charged the accused with killing and murdering one John Brian. In still another case (*Taylor vs. State*, decided in 1896), a new trial was granted because of the use of the word "and"

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in the indictment when it should have been "or." "I might multiply these instances of the absurdities of the criminal law," he concluded, "but the instances I have given will serve the purpose of emphatic illustration of an immediate necessity for the enactment of laws which will forever end such quibbles. It is not my purpose to criticize the correctness of these decisions, or to say ought that will in any way reflect on the particular judge or tribunal that delivered them, but I condemn in unequivocal terms a law that makes such decisions necessary and makes a farce of justice. If property rights were to be made to depend upon such farcical technicalities as is the life, the peace, and tranquility of the citizen, such a law would be torn up, root and branch." The courts must be "aroused to a consciousness of the monstrous perversions of justice that are frequently occurring through the technical constitutional shields surrounding the accused," and they will help the courts as well to a higher appreciation of their duties to society.

We agree with Judge Mayes that the present state of the administration of the criminal law in America is "a reproach to its intelligence and an injustice to its civilization." Our bar associations need more lectures of this sort from the supreme judges.

Criminal Insanity and the Law. A special committee of the New York Bar Association, on the commitment and discharge of the criminal insane, has made a report recommending legislation for eliminating the scandals growing out of the misuse of the writ of habeas corpus in securing the release of persons detained in public institutions on the ground of insanity; and for the abolition of the abuses resulting from the insanity plea in murder cases. Under the existing law of New York, a person detained in a public or private institution may, if his means are ample enough to enable him to command the assistance of counsel and experts, obtain a writ every day during the period of his confinement. The justice to whom the petition for the writ is addressed is bound under penalty to grant it and, on the return, try the issue as to whether the petitioner is still insane. To meet the evil to which this procedure often leads in practice the committee recommends that in the case of one detained as insane in a *public* institution, the application for a writ shall be accompanied by a certificate made under oath by two qualified medical examiners in lunacy, or other evidence showing probable cause, which certificate shall state that the examiners have made a careful examination of the person in custody and of the official records of his case and that in their opinion he has recovered his sanity. This provision does not apply in the cases of persons in private institutions, the writ being allowed as of right in all such cases.

In dwelling upon the abuses of the insanity plea the committee takes occasion to recall the circumstances of a recent "well-known case which has been in the public eye for a long time, where a murderer, having escaped the consequences of his crime by the plea of insanity, is trying to escape the consequences of his plea by means of a continuous performance in habeas corpus." Speaking of this notorious and shameful affair, the committee has this to say: "A youthful debauchee, of great wealth, trained to believe that his money gave him a right of freedom from all restraints, whether imposed by law or the rules of decency, inheriting an abnormality of mind likely to develop into homicidal acts, leading a debased and ignoble life, without a